

No. 8/287-0

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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LISA BROWN, Washington State Senator and Majority Leader of the  
Washington State Senate,

Petitioner,

v.

BRAD OWEN, Lieutenant Governor of the State of Washington,

Respondent.

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**PETITION AGAINST STATE OFFICER**

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BY RONALD R. CARPENTER

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CLERK

**ORIGINAL**

## **I. SUMMARY OF THIS PETITION**

1. Friday's Passage of SB 6931. On Friday, February 29, Senate Bill 6931 received a majority vote in the Washington State Senate, with 25 of the 49 State Senators voting in favor of that bill. The bill imposes a 42¢ per liter surcharge on certain liquor to fund increased DUI patrols and chemical dependency treatment. The petitioner in this action, State Senator Lisa Brown, was one of the majority-creating 25 votes in favor.

2. State Constitution. Article II, §22 of our State Constitution provides that a bill such as Senate Bill 6931 passes if it receives a majority vote in favor. Thus, under the provisions of our State Constitution, Senate Bill 6931 passed the Senate.

3. Respondent's Duty. The Respondent, Lieutenant Governor Brad Owen, has no legal right or authority to refuse to allow a bill that passes the Senate to be forwarded on the House as passed. Instead, he must forward bills that pass the Senate on to the House.

4. Respondent's Refusal. On Friday, February 29, Respondent refused to allow Senate Bill 6931 to be forwarded on the House as passed because that bill had not received the 2/3 supermajority specified for passage in RCW 43.135.035(1).

5. Resulting Controversy. As a result of the above, there is a current and existing controversy as to whether a State statute (RCW 43.135.035(1)) can constitutionally change the passage requirement for bills from the majority-vote passage requirement established by our

State Constitution (Article II, §22). If a statute cannot amend the Constitution, then Senate Bill 6931 passed the Senate, and the Respondent has no legal right or authority to refuse to allow that bill to be forwarded on to the House as passed. Instead, he must forward that bill on to the House as passed. On the other hand, if a State statute can amend the Constitution, then the Respondent's refusal was correct. This existing dispute is between parties with genuine, direct, and substantial opposing interests, and the judicial determination of this Constitutional dispute will be final and conclusive.

6. Thursday, March 13 Deadline. The current legislative session expires at midnight on Thursday, March 13. Thus, unless this Court resolves this controversy before that deadline, it will allow the State statute at issue to have amended the State Constitution.

7. Mandamus Action. The petitioner accordingly files this Petition Against State Officer directly in this State Supreme Court to promptly resolve this controversy. Since a State statute cannot amend our State Constitution, petitioner respectfully requests a mandamus Order requiring the Lieutenant Governor to comply with his duty to forward Senate Bill 6931 on to the House as passed.

## **II. PARTIES**

8. Petitioner. Petitioner Lisa Brown is a member of the Washington State Senate elected by the voters of the 3<sup>rd</sup> Legislative District in Eastern Washington. She is also the Majority Leader of the Washington State Senate, and was one of the 25 votes in favor of Senate

Bill 6931. She has complied with all conditions precedent to bring this action.

9. Respondent. Respondent Brad Owen is the Lieutenant Governor of the State of Washington, and as such his Constitutional duties include serving as the President of the Senate. Article III, §16. As a Statewide elected official, he takes the oath of office specified in RCW 43.01.020 to faithfully discharge the duties of his office.

### **III. JURISDICTION & VENUE**

10. Jurisdiction & Venue is Proper in this Court. The Washington Supreme Court has original jurisdiction pursuant to Article IV, §4 of our State Constitution. This Petition Against State Officer is also properly brought in this Court pursuant to, among other provisions, RAP 16.2 & Form 16, and Chapter 7.16 RCW.

### **IV. ADDITIONAL NOTICE TO AVOID DELAYS**

11. Verbal Notice to the Office of the Attorney General and this Court. On the afternoon of Friday, February 29, the undersigned counsel (Mr. Ahearn) called Washington Solicitor General Maureen Hart to inform her of the undersigned counsel having been retained to file a mandamus action on Monday, March 3. Since the Solicitor General's voicemail said she was out of the office, the undersigned counsel called two other attorneys in the Solicitor General's office. First he called Deputy Solicitor General James Pharris – but got his voicemail, and left a message concerning this Monday filing. He then called and spoke with Deputy Solicitor General Jeffrey Even – and advised Mr. Even of this

Monday filing. Mr. Even understandably could not know at that time who would be representing the Respondent or who from the Attorney General's office would be involved in defending the Constitutionality of the State statute at issue in this matter, but as a courtesy to this Court, he and the undersigned counsel called the Clerk's Office of this Court and asked that Supreme Court Clerk Ronald Carpenter be informed that a mandamus petition by Senator Brown against Lieutenant Governor Owen would likely be filed on Monday.

12. Copies of Petition to Others. In addition to being served on the Respondent, a copy of this Petition and its accompanying pleadings are being served today on the Office of the Washington Attorney General, as is required by RCW 7.24.110 for actions such as this that challenge the Constitutionality of a State statute. Copies of this Petition and its accompanying pleadings are also being delivered today to the Minority Leader of the Senate, and to the Minority and Majority Leaders of the House. A copy of this Petition and its accompanying pleadings are also being delivered to Mr. Tim Eyman, the first named sponsor of the most recent initiative that amended parts of the statute at issue (RCW 43.135.035(1)) – even though that initiative (I-960) did not amend the “2/3 supermajority” element at issue in this case.

## **V. BACKGROUND**

### **A. Washington State Constitution**

13. Constitution. Our State Constitution establishes the fundamental structure of our State government, including the fundamental requirements for the legislature to enact a bill into law.

14. Supermajority Passage for Certain Types of Bills. Our State Constitution provides that ten types of passage by the legislature require a 2/3 supermajority vote. Washington State Constitution Article II, §1(c) [2/3 supermajority of each house required to alter direct legislation within two years of its enactment]; Article II, §9 [2/3 supermajority of house required to expel a member]; Article II, §12 [2/3 supermajority of each house required to call a special session]; Article II, §36 [2/3 supermajority of each house required to introduce a bill within a session's last ten days]; Article II, §43 [2/3 supermajority of each house required to modify the redistricting commission's plans or to reconvene that commission]; Article III, §12 [2/3 supermajority in each house required to overturn the governor's veto]; Article V, §1 [2/3 supermajority vote of Senate required to impeach public officers]; Article XXIII, §1 [2/3 supermajority of each house required to propose amendments to the constitution]; Article XXIII, §2 [2/3 supermajority of each house required to call a constitutional convention]; Article XXVIII, §1 [2/3 supermajority of each house required to alter the law establishing a legislative salary commission].

15. Simple Majority Passage for All Other Types of Bills. For all other types of bills, our State Constitution provides that a bill requires a simple majority vote to pass into law. More specifically, Article II, §22 states: **“Passage of bills.** No bill shall become a law unless on its final passage ... a majority of the members elected to each house be recorded thereon as voting in its favor.”

16. Amending Our Constitution. Our State Constitution provides a specific process for amending the provisions of our State Constitution. Article XXIII. A State statute, however, cannot amend our State Constitution.

**B. The Statute at Issue**

17. RCW 43.135.035(1). RCW 43.135.035(1) adds another category of legislation that requires a 2/3 supermajority vote to pass into law. That statute provides in relevant part that “After July 1, 1995, any action or combination of actions by the legislature that raises taxes may be taken only if approved by a two-thirds vote of each house of the legislature”. RCW 43.135.035(1). A copy of that statute is attached as Exhibit A.

18. Prior Versions of this Statute. The 2/3 supermajority requirement in RCW 43.135.035(1) was originally enacted as part of Initiative 601. This statute and its 2/3 supermajority requirement was then reenacted by the legislature in later years. The scope of bills subject to this statute’s 2/3 supermajority requirement was recently amended by Initiative 960 – but the 2/3 supermajority requirement of

RCW 43.135.035(1) itself was not amended by that Initiative. This Petition accordingly is not a challenge of Initiative 960. It is instead a challenge to the previously-existing, and still currently existing, 2/3 supermajority requirement in RCW 43.135.035(1).

C. **The Straightforward Constitutional Question Underlying This Petition**

19. Constitutionality of the 2/3 supermajority requirement in RCW 43.135.035(1). The straightforward Constitutional question underlying this Petition is whether a State statute (RCW 43.135.035(1)) can amend the simple majority passage provision of Article II, §22 by creating a new category of bills that requires a 2/3 supermajority for passage instead.

20. One Prior Case Raising This Same Constitutional Question. The parties in *Walker v. Munro*, 124 Wn.2d 402 (1994), presented this same Constitutional question to this Court – namely, whether RCW 43.135.035(1) could amend the simple majority passage provision of Article II, §22 by creating a new category of bills that requires a 2/3 supermajority for passage instead. This Court declined to rule on this Constitutional question, however, because this Court did not have before it a bill that had passed with a majority but not a 2/3 supermajority. This case, however, presents such a bill – namely, Senate Bill 6931.

21. Another Prior Case Raising This Constitutional Question. The parties in *Futurewise v. Reed*, 161 Wn.2d 407 (2007), presented this same Constitutional question to this Court – namely, whether



RCW 43.135.035(1) could amend the simple majority passage provision of Article II, §22 by creating a new category of bills that requires a 2/3 supermajority for passage instead. This Court declined to rule on this Constitutional question, however, because the petitioners had challenged a potential hypothetical version of that statute (the not-yet-voted-on I-960) instead of the actual version of that statute existing at that time. This case, however, is based on the current existing version of that statute – namely, the 2/3 supermajority provision in RCW 43.135.035(1).

**D. Senate Bill 6931**

22. Senate Bill 6931. Senate Bill 6931 imposes a 42¢ per liter surcharge on certain liquor to fund increased DUI patrols and chemical dependency treatment. A copy of that bill is attached as Exhibit B. The expenditures in this bill do not exceed the expenditure limits established under Chapter 43.135 RCW.

23. Majority Vote Passage of Senate Bill 6931. On Friday, February 29, Senate Bill 6931 received a majority vote in the Washington State Senate, with 25 of the 49 State Senators voting in favor of that bill. A copy of the roll call of that vote is attached as Exhibit C (“3<sup>rd</sup> Reading & Final Passage” on SB 6931, recording “Yea: 25 Nay: 21 Excused: 2 Absent: 1”). Those votes were properly cast. Senate Bill 6931 accordingly passed the Senate under the majority-vote provision of Article II, §22 of our State Constitution.

24. Respondent’s Refusal. The Respondent, Lieutenant Governor Brad Owen, has no legal right or authority to refuse to forward a

bill that passes the Senate on the House as passed. He must instead forward bills that pass the Senate on to the House as passed. On Friday, February 29, however, he refused to forward Senate Bill 6931 on the House as passed because that bill had not received the 2/3 supermajority specified for passage in RCW 43.135.035(1). A copy of the Lieutenant Governor's explanation for that refusal is attached as Exhibit D.

**E. Existing Constitutional Controversy & Need For Timely Mandamus Relief**

25. Resulting Controversy Can Be Resolved Only By This Court. It is the sole province of this Court to determine whether a State statute is or is not Constitutional. The controversy presented by this Petition therefore can be resolved only by this Court – for only this Court can determine whether the State statute at issue (RCW 43.135.035(1)) can constitutionally change the passage requirement for bills from the majority-vote requirement established by our State Constitution.

26. Need For Prompt Mandamus Relief. Washington law provides that a writ of mandamus “must be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law.” RCW 7.16.170. Unless this Court determines the fundamental Constitutional question presented by this Petition and issues the writ of mandamus requested, there is no plain, speedy, and adequate remedy in the ordinary course of law in this case. The current legislative session expires at midnight on Thursday, March 13, 2008. Unless this Court resolves this controversy before that deadline and issues the relief

requested in this Petition, the statute at issue will have amended our State Constitution.

27. Mandamus Action. The petitioner accordingly files this Petition Against State Officer directly in this State Supreme Court to promptly resolve this controversy. Since a statute cannot amend our State Constitution, the petitioner respectfully requests a mandamus Order under this Court's original jurisdiction to order the Lieutenant Governor to forward Senate Bill 6931 on to the House as passed by the majority vote specified in Article II, §22 of the Washington State Constitution.

28. Conclusion. Petitioner has no alternative plain, speedy, or adequate remedy under the law to secure the enforcement of our State Constitution and the majority-vote passage provision of Article II, §22. Petitioner therefore respectfully requests that this Court grant this Petition and issue the writs and orders necessary to grant the relief specified below.

## **VI. REQUESTED RELIEF**

Petitioner respectfully requests the following relief from this Court:

1. An Order that either
  - (a) sets a briefing and hearing schedule to allow the final termination of this Petition Against State Officer before the March 13, 2008 adjournment of the current legislative session; or
  - (b) rules that this Court will retain this case to determine the Constitutional question raised, and sets a briefing and hearing schedule that allows the final termination of that decision before the next legislative session begins in January 2009.

2. Writs of mandamus and/or prohibition that
  - (a) prohibit the Lieutenant Governor from refusing to forward Senate Bill 6931 on the House on the grounds that it passed with only a majority instead of the 2/3 supermajority specified by RCW 43.135.035(1), and
  - (b) order the Lieutenant Governor to comply with his duty to forward Senate Bill 6931 on to the House as passed because the 2/3 supermajority requirement of RCW 43.135.035(1) is unconstitutional under Article II, §22.
3. Writs of mandamus and/or prohibition that prohibit the Lieutenant Governor from refusing to forward Senate Bills on the House on the grounds that they passed with only a majority instead of the 2/3 supermajority specified by RCW 43.135.035(1), because the 2/3 supermajority requirement of RCW 43.135.035(1) is unconstitutional under Article II, §22.
4. Such other relief as this Court deems just or equitable, including but not limited to whatever additional writs, declarations, or Orders are necessary or proper to resolve the Constitutional question raised by this controversy, and to confirm that the 2/3 supermajority requirement imposed by RCW 43.135.035(1) is unconstitutional under Article II, §22 of the Washington State Constitution.

RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of March, 2008.

Foster Pepper PLLC

A large, stylized handwritten signature in black ink, likely belonging to Hugh D. Spitzer, is written over a horizontal line.

Hugh D. Spitzer, WSBA No. 5827  
Thomas F. Ahearne, WSBA No. 14844  
Ramsey Ramerman, WSBA No. 30423  
Attorneys for Petitioner

**RCW 43.135.035. Tax legislation--Conditions and restrictions--Ballot title-- Declarations of emergency--Taxes on intangible property--Expenditure limit to reflect program cost shifting or fund transfer (Effective until July 1, 2008)**

(1) After July 1, 1995, any action or combination of actions by the legislature that raises taxes may be taken only if approved by a two-thirds vote of each house of the legislature, and then only if state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter. Pursuant to the referendum power set forth in Article II, section 1(b) of the state Constitution, tax increases may be referred to the voters for their approval or rejection at an election.

(2)(a) If the legislative action under subsection (1) of this section will result in expenditures in excess of the state expenditure limit, then the action of the legislature shall not take effect until approved by a vote of the people at a November general election. The state expenditure limit committee shall adjust the state expenditure limit by the amount of additional revenue approved by the voters under this section. This adjustment shall not exceed the amount of revenue generated by the legislative action during the first full fiscal year in which it is in effect. The state expenditure limit shall be adjusted downward upon expiration or repeal of the legislative action.

(b) The ballot title for any vote of the people required under this section shall be substantially as follows: "Shall taxes be imposed on ..... in order to allow a spending increase above last year's authorized spending adjusted for \*inflation and population increases?"

(3)(a) The state expenditure limit may be exceeded upon declaration of an emergency for a period not to exceed twenty-four months by a law approved by a two-thirds vote of each house of the legislature and signed by the governor. The law shall set forth the nature of the emergency, which is limited to natural disasters that require immediate government action to alleviate human suffering and provide humanitarian assistance. The state expenditure limit may be exceeded for no more than twenty-four months following the declaration of the emergency and only for the purposes contained in the emergency declaration.

(b) Additional taxes required for an emergency under this section may be imposed only until thirty days following the next general election, unless an extension is approved at that general election. The additional taxes shall expire upon expiration of the declaration of emergency. The legislature shall not impose additional taxes for emergency purposes under this subsection unless funds in the education construction fund have been exhausted.

(c) The state or any political subdivision of the state shall not impose any tax on intangible property listed in RCW 84.36.070 as that statute exists on January 1, 1993.

(4) If the cost of any state program or function is shifted from the state general fund or a related fund to another source of funding, or if moneys are transferred from the state general fund or a related fund to another fund or account, the state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall lower the state expenditure limit to reflect the shift. For the purposes of this section, a transfer of money from the state general fund or a related fund to another fund or account includes any state legislative action taken that has the effect of reducing revenues from a particular source, where such revenues would otherwise be deposited into the state general fund or a related fund, while increasing the revenues from that particular source to another state or local government account. This subsection does not apply to the dedication or use of lottery revenues under RCW 67.70.240(3) or property taxes under RCW 84.52.068, in support of education or education expenditures.

(5) If the cost of any state program or function and the ongoing revenue necessary to fund the program or function are shifted to the state general fund or a related fund on or after January 1, 2007, the state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall increase the state expenditure limit to reflect the shift unless the shifted revenue had previously been shifted from the general fund or a related fund.

(6) For the purposes of this act, "raises taxes" means any action or combination of actions by the legislature that increases state tax revenue deposited in any fund, budget, or account, regardless of whether the revenues are deposited into the general fund.

Exhibit "A"

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SENATE BILL 6931

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State of Washington                      60th Legislature                      2008 Regular Session

By Senators Kline, Weinstein, and McDermott

Read first time 02/06/08. Referred to Committee on Judiciary.

1            AN ACT Relating to providing funding for additional emphasis  
2            patrols for DUI enforcement and chemical dependency treatment; amending  
3            RCW 66.08.190 and 66.16.010; and reenacting and amending RCW 69.50.520.

4            BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            **Sec. 1.** RCW 66.08.190 and 2003 1st sp.s. c 25 s 927 are each  
6            amended to read as follows:

7            (1) Except for revenues generated by the ((2003)) surcharge of  
8            \$0.42/liter on retail sales of spirits ((that shall be distributed to  
9            the state general fund during the 2003-2005 biennium)) imposed in RCW  
10           66.16.010(1), when excess funds are distributed, all moneys subject to  
11           distribution shall be disbursed as follows:

12           (a) Three-tenths of one percent to border areas under RCW  
13           66.08.195; and

14           (b) From the amount remaining after distribution under (a) of this  
15           subsection, (i) fifty percent to the general fund of the state, (ii)  
16           ten percent to the counties of the state, and (iii) forty percent to  
17           the incorporated cities and towns of the state.

18           (2) During the months of June, September, December, and March of  
19           each year, prior to disbursing the distribution to incorporated cities

Exhibit "B"

1 and towns under subsection (1)(b) of this section, the treasurer shall  
2 deduct from that distribution an amount that will fund that quarter's  
3 allotments under RCW 43.88.110 from any legislative appropriation from  
4 the city and town research services account. The treasurer shall  
5 deposit the amount deducted into the city and town research services  
6 account.

7 (3) The governor may notify and direct the state treasurer to  
8 withhold the revenues to which the counties and cities are entitled  
9 under this section if the counties or cities are found to be in  
10 noncompliance pursuant to RCW 36.70A.340.

11 **Sec. 2.** RCW 66.16.010 and 2005 c 518 s 935 are each amended to  
12 read as follows:

13 (1) There shall be established at such places throughout the state  
14 as the liquor control board, constituted under this title, shall deem  
15 advisable, stores to be known as "state liquor stores," for the sale of  
16 liquor in accordance with the provisions of this title and the  
17 regulations: PROVIDED, That the prices of all liquor shall be fixed by  
18 the board from time to time so that the net annual revenue received by  
19 the board therefrom shall not exceed thirty-five percent. Effective  
20 ~~((no later than July 1, 2005))~~ September 1, 2008, the liquor control  
21 board shall add an equivalent surcharge of \$0.42 per liter on all  
22 retail sales of spirits, excluding licensee, military, and tribal  
23 sales. ~~((The intent of this surcharge is to raise revenue for the  
24 general fund state for the 2003-2005 and 2005-2007 bienniums. The  
25 board shall remove the surcharge June 30, 2007.))~~

26 (2) The liquor control board may, from time to time, fix the  
27 special price at which pure ethyl alcohol may be sold to physicians and  
28 dentists and institutions regularly conducted as hospitals, for use or  
29 consumption only in such hospitals; and may also fix the special price  
30 at which pure ethyl alcohol may be sold to schools, colleges and  
31 universities within the state for use for scientific purposes.  
32 Regularly conducted hospitals may have right to purchase pure ethyl  
33 alcohol on a federal permit.

34 (3) The liquor control board may also fix the special price at  
35 which pure ethyl alcohol may be sold to any department, branch or  
36 institution of the state of Washington, federal government, or to any

1 person engaged in a manufacturing or industrial business or in  
2 scientific pursuits requiring alcohol for use therein.

3 (4) The liquor control board may also fix a special price at which  
4 pure ethyl alcohol may be sold to any private individual, and shall  
5 make regulations governing such sale of alcohol to private individuals  
6 as shall promote, as nearly as may be, the minimum purchase of such  
7 alcohol by such persons.

8 **Sec. 3.** RCW 69.50.520 and 2005 c 518 s 937, 2005 c 514 s 1107, and  
9 2005 c 514 s 202 are each reenacted and amended to read as follows:

10 The violence reduction and drug enforcement account is created in  
11 the state treasury. All designated receipts from RCW 9.41.110(8),  
12 66.24.210(4), 66.24.290(2), 69.50.505(9)(a), 82.08.150 (5) and  
13 (7)(b)(iii), 82.24.020(2), 82.24.026(2)(c), 82.64.020, 66.16.010(1),  
14 and section 420, chapter 271, Laws of 1989 shall be deposited into the  
15 account. Expenditures from the account may be used only for funding  
16 services and programs under chapter 271, Laws of 1989 and chapter 7,  
17 Laws of 1994 sp. sess., including state incarceration costs. Funds  
18 from the account may also be appropriated to reimburse local  
19 governments for costs associated with implementing criminal justice  
20 legislation including chapter 338, Laws of 1997. Fifty percent of the  
21 money derived from the surcharge imposed in RCW 66.16.010(1) is to be  
22 appropriated to the department of social and health services, division  
23 of alcohol and substance abuse, for the sole purpose of funding  
24 treatment for the chemically dependent who would otherwise be unable to  
25 obtain treatment. The remaining fifty percent of the money derived  
26 from the surcharge imposed in RCW 66.16.010(1) is to be appropriated to  
27 the traffic safety commission for the sole purpose of providing grants  
28 to local government for the driving under the influence emphasis patrol  
29 programs. Funds from the surcharge imposed in RCW 66.16.010(1) shall  
30 not be used to supplant existing local funding. During the 2003-2005  
31 and 2005-2007 bienniums, funds from the account may also be used for  
32 costs associated with providing grants to local governments in  
33 accordance with chapter 338, Laws of 1997, funding drug offender  
34 treatment services in accordance with RCW 70.96A.350, maintenance and  
35 operating costs of the Washington association of sheriffs and police  
36 chiefs jail reporting system, maintenance and operating costs of the  
37 juvenile rehabilitation administration's client activity tracking



1 system, civil indigent legal representation, multijurisdictional  
2 narcotics task forces, transfers to the health services account, and  
3 grants to community networks under chapter 70.190 RCW by the family  
4 policy council.

--- END ---

WASHINGTON STATE  
**SENATE**  
60th Legislature - 2008 - Regular Session

**BRAD OWEN**  
President of the Senate

**ROSA FRANKLIN**  
President Pro Tempore

**THOMAS C. HOEMANN, Secretary of the Senate**

**ROLL CALL TRANSCRIPT**

*Legislative Session Day 47*

**1 QUORUM**

**Outcome QUORUM**

Total Votes: 49    Yea: 47    Nay: 0    Excused: 2    Absent: 0

**Yea:** Senator(s): Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein, Zarelli

**Excused:** Senator(s): Hewitt, Pflug

**2 SGA 9263**

**JAMES GARRISON, term ending 4/03/2011, to the St  
Board for Community and Technical Colleges.**

**Outcome CONFIRMED**

Total Votes: 49    Yea: 47    Nay: 0    Excused: 2    Absent: 0

**Yea:** Senator(s): Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein, Zarelli

**Excused:** Senator(s): Hewitt, Pflug

**3 SGA 9257**

**TOM KOENNINGER, term ending 4/03/2011, to the  
St Board for Community and Technical Colleges.**

**Outcome CONFIRMED**

Total Votes: 49    Yea: 47    Nay: 0    Excused: 2    Absent: 0

**Yea:** Senator(s): Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein, Zarelli

**Excused:** Senator(s): Hewitt, Pflug

Exhibit "C"

- 4 SSB 6423      **Strengthening the tax credit and modifying the governing board of a Washington motion picture competitiveness program.**      **Outcome PASSED**
- 3rd Reading & Final Passage
- Total Votes: 49    Yea: 47    Nay: 0    Excused: 2    Absent: 0
- Yea:** Senator(s): Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein, Zarelli
- Excused:** Senator(s): Hewitt, McAuliffe
- 5 2SSB 6626      **Creating a sales and use tax deferral program for eligible investment projects in community empowerment zones.**      **Outcome PASSED**
- 3rd Reading & Final Passage
- Total Votes: 49    Yea: 48    Nay: 0    Excused: 1    Absent: 0
- Yea:** Senator(s): Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein, Zarelli
- Excused:** Senator(s): Hewitt
- 6 SSB 6828      **Concerning the excise taxation of the aerospace industry.**      **Outcome PASSED**
- 3rd Reading & Final Passage
- Total Votes: 49    Yea: 44    Nay: 4    Excused: 1    Absent: 0
- Yea:** Senator(s): Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Hargrove, Hatfield, Haugen, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Zarelli
- Nay:** Senator(s): Fraser, Kline, Oemig, Weinstein
- Excused:** Senator(s): Hewitt
- 7 E2SSB 6111      **Concerning electricity generation from tidal and wave energy.**      **Outcome PASSED**
- 3rd Reading & Final Passage
- Total Votes: 49    Yea: 45    Nay: 3    Excused: 1    Absent: 0
- Yea:** Senator(s): Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, Weinstein, Zarelli
- Nay:** Senator(s): Kohl-Welles, Regala, Spanel
- Excused:** Senator(s): Hewitt

8 SB 6912

**Providing property tax relief for senior citizens and persons retired by reason of physical disability by increasing the income thresholds.**

**Outcome FAILED**

**Amendment Number 193 by Senator Benton and others, on page 4, after line 5 - Not Adopted**

Total Votes: 49    Yea: 22    Nay: 26    Excused: 1    Absent: 0

**Yea:** Senator(s): Benton, Brandland, Carrell, Delvin, Haugen, Holmquist, Honeyford, Kastama, Kilmer, King, McCaslin, Morton, Parlette, Pflug, Rasmussen, Roach, Rockefeller, Schoesler, Sheldon, Stevens, Swecker, Zarelli

**Nay:** Senator(s): Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Hobbs, Jacobsen, Kauffman, Keiser, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Regala, Shin, Spanel, Tom, Weinstein

**Excused:** Senator(s): Hewitt

9 SB 6912

**Providing property tax relief for senior citizens and persons retired by reason of physical disability by increasing the income thresholds.**

**Outcome PASSED**

**3rd Reading & Final Passage**

Total Votes: 49    Yea: 46    Nay: 2    Excused: 1    Absent: 0

**Yea:** Senator(s): Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, Weinstein, Zarelli

**Nay:** Senator(s): Franklin, Spanel

**Excused:** Senator(s): Hewitt

10 SB 6931

**Providing funding for additional emphasis patrols for DUI enforcement and chemical dependency treatment.**

**Outcome FAILED**

**3rd Reading & Final Passage**

Total Votes: 49    Yea: 25    Nay: 21    Excused: 2    Absent: 1

**Yea:** Senator(s): Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Hobbs, Jacobsen, Keiser, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Regala, Rockefeller, Shin, Spanel, Tom, Weinstein

**Nay:** Senator(s): Benton, Berkey, Carrell, Delvin, Haugen, Holmquist, Honeyford, Kastama, Kauffman, Kilmer, King, McCaslin, Parlette, Pflug, Rasmussen, Roach, Schoesler, Sheldon, Stevens, Swecker, Zarelli

**Excused:** Senator(s): Brandland, Hewitt

**Absent:** Senator(s): Morton

RULINGS OF LIEUTENANT GOVERNOR BRAD OWEN

time whether the absence of a referendum clause on a measure which does impose a tax constitutes an amendment to I-695, requiring a two-thirds vote under Article 2, Section 1 of the State Constitution. Mr. President, the time has come for such a ruling. Substitute Senate Bill No. 6231 does impose a tax, and does not contain a referendum clause.

"Mr. President, my point of order: Substitute Senate Bill No. 6231 does not contain a referendum clause in violation of section 2(1) of I-695. As such, the measure should be set down."

"Mr. President, my contingent point of order is on the number of votes necessary to pass Engrossed Substitute Senate Bill No. 6231. If you decline to rule that Engrossed Substitute Senate Bill No. 6231 requires a referendum clause, then I submit that because the measure does not contain a referendum clause, it effectively amends I-695. Under Article 2, section 1 of the Constitution, I respectfully submit that the passage of Engrossed Substitute Senate Bill No. 6231 would therefore require a two-thirds majority vote." (Page 500-2000).

REPLY BY THE PRESIDENT

President Owen: "The President is not prepared to rule at this time. He is going to need some time to review the citing." (Page 500-2000).

RULING BY THE PRESIDENT

President Owen: "In ruling upon the point of order by Senator Rossi concerning Engrossed Substitute Senate Bill No. 6231, the President finds in accordance with prior rulings, first, that the question of whether or not a referendum is required is not in order, and, second, that the measure is not an amendment to Initiative 695, because it does not change any provision of the initiative.

Therefore, a simple majority vote is required to pass the measure." (Page 500-2000).

I-960

**Fee v. Tax**

"In ruling upon the inquiry raised by Senator Sheldon as to the application of Initiative Number 960 to Senate Bill 6931, as well as the point raised by Senator Brown as to the Constitutional duties of this body, the President finds and rules as follows.

The President begins by addressing the argument raised by Senator Brown as to a possible conflict between the Constitution and I-960 with respect to the number of votes required to pass a measure. The Constitution is the preeminent law of our state, and all other laws and rules applicable to this body are unquestionably subordinate to the Constitution. Nonetheless, the President has taken an oath to uphold all of the laws of our state and nation, including both Constitutional and statutory law. Whatever the merits of Senator Brown's legal argument—and the President is inclined to agree with her arguments—it is not for him to decide legal matters. Under our Constitutional framework of separation of powers, the authority for determining a legal conflict between the Constitution and a statute is clearly vested with the courts. It is for this reason that the President has a long-standing tradition of refraining from making legal determinations, and he does so, again, in this case. Senator Brown's arguments are cogent and persuasive, but the proper venue for these legal arguments is in the courts, not in a parliamentary body. For these reasons, the President believes he lacks any discretion to make such a ruling, and he explicitly rejects making any determination as to the Constitutionality of I-960 and instead is compelled to give its provisions

Exhibit "D"

the full force and effect he would give any other law.

Turning now to the issue raised by Senator Sheldon as to whether or not the surcharge imposed by this measure is a tax or a fee, the President takes note of his prior rulings and the plain language of I-960 in making this determination. In so doing, it is worth noting that I-960 includes a very broad definition of tax, covering 'any action or combination of actions by the legislature that increase state revenue deposited into any fund, budget, or account.' The President still believes that there is a distinction between a 'tax' and a 'fee,' just as there was under Initiative Number 601—indeed, I-960, itself, speaks of both taxes and fees. As a result, the President's earlier body of precedent for determining fees and taxes under I-601 is still instructive, albeit working within this tighter definition of 'tax' set forth in I-960.

Harmonizing these past rulings with the specific language of I-960, the President believes that there must be a very close nexus between those paying a fee and the purpose for which that fee is being used; absent this tight connection, a revenue action is more properly characterized as a general tax, not a specific fee.

Applying this analysis to the measure before us, the President does find a connection between collecting a charge on liquor and spending the proceeds on increased drunk driving patrols and drug treatment, but he believes the nexus is not sufficiently direct under the tighter definition of I-960—that is, the connection between those paying the surcharge and the purposes for which it may be used is not narrow. The purposes are very noble and desirable, but they are not directly connected to those paying the surcharge: Many who pay the surcharge will

benefit from increased patrols, but so will the general populace; likewise, almost all who pay the surcharge will not need drug treatment programs. Because the purposes for which the surcharge's proceeds will be spent are not specifically connected with those who will pay the surcharge, it should more properly be characterized as a tax, not a fee. For this reason, a supermajority vote of this body—that is, 33 votes—is needed for final passage, and Senator Sheldon's point is well-taken." (February 29, 2008).

### **OFM v. Legislative Roles**

In ruling on the inquiry raised by Senator Schoesler as to the application of Initiative Number 960 to Engrossed Substitute Senate Bill 5261, the President finds and rules as follows.

I-960 contains many provisions, but, for purposes of my analysis, its major sections may be properly segregated as conferring obligations on two branches of government: First, the Office of Financial Management, as part of the executive branch, is charged with providing certain fiscal analysis and public notice when a bill imposes a tax or a fee. Second, I-960 imposes certain obligations upon the Legislature, requiring supermajority votes on and referral to the voters of particular measures under certain circumstances relating to the imposition of tax increases. In this particular case, Senator Schoesler is challenging OFM's determination that this measure is neither a tax nor a fee, and therefore those provisions of I-960 which require OFM to perform fiscal analysis and provide public notice are not triggered.

The President reminds the body that he provides parliamentary rulings, not legal advice. While the President can properly